IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revision No.2163 of 2005 (O&M)
Date of Decision: February 18,2010

Amrik Singh .....Petitioner

Versus

State of Punjab .....Respondent

Coram: Hon'ble Mrs. Justice Sabina

Present: Mrs.G.K.Mann, Advocate for the petitioner.
Mr.Amandeep Singh Rai, Assistant Advocate General, Punjab

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Sabina, J.

Petitioner-Amrik Singh was convicted for an offence under Section 304-A of the Indian Penal Code (`IPC' for short) vide judgment dated 14.3.2002 by the Sub Divisional Judicial Magistrate Ajnala . Vide order of even date, petitioner was sentenced to undergo rigorous imprisonment for a period of one year for offence under Section 304-A IPC and to pay a fine of Rs.250/-. Aggrieved by the same, petitioner preferred an appeal and learned Sessions Judge while accepting the appeal qua accused-Amrik Singh,Forest Guard, son of Mohan Singh, acquitted him of the offence under Section 304-A IPC and appeals of the other accused/appellants were dismissed and their conviction and sentence imposed by the trial Court was upheld vide judgment and order dated 7.11.2005. Hence, the present revision petition by petitioner-Amrik Singh son of Achhar Singh, resident of Harsha Chhina.

The brief facts of the case, as noticed by the Appellate Court in paras 2 and 3 of its judgment, are as under:-

> "2. The prosecution story, in brief, is that on 6.9.1996 Manjit Singh (Complainant) PW3, along with Swinder Singh, Sarpanch (deceased) at about 10 A.M. had gone to Raja Sansi in connection with their work, on a scooter. After doing that work, they were coming back to their village, Bagge Kalan on the scooter, which was being driven by the deceased and he was sitting on the pillion seat thereof. When at about 2.30 P.M. they reached in front of the farm house of Gurdev Singh son of Rattan Singh, they found that one tractor-trolly was lying parked on the left side of the road, in which the logs of wood had been loaded. At that time, a log of wood, lying on one side of the road, was being pulled with the help of the tractor by putting an iron wire around that log of wood. That tractor was being driven by Mohan Singh (accused). The other three accused; namely, Gurmukh Singh, Amrik Singh Baildar and Amrik Singh Nambari Jamadar gave a signal to the tractor driver to pull the log of wood, who started that tractor without giving any signal and in a negligent manner. As a result of the starting of that tractor, the iron wire was pulled and it rose above the level of the road. As a result of that, the said iron wire struck with force in the face of the deceased and his face was cut and he himself and the complainant fell down from the scooter and received multiple injuries. On hearing the noise of this accident, Gurdev Singh and Balbir Singh (PW3) were attracted to the spot, who also witnessed this accident. After arranging for the

conveyance, the deceased was being removed to the hospital, but he died on the way. His dead body was removed to his house, situated in village, Bagge Kalan. After leaving other persons to guard the dead body, the complainant accompanied by Balbir Singh was proceeding to the police station to lodge a report when Kashmir Singh ASI alongwith other police officials, met him in the limits of village, Chhike Wichle Kalan. At that place, the complainant made his statement Ex.PA before the ASI, who after making his endorsement upon the same sent that to the police station, on the basis of which, FIR Ex.PW-9/B was recorded against all the accused under Sec.304-A and 337 of the IPC. The ASI accompanied by the complainant, came to the house of the deceased and prepared the inquest report in respect of his dead body, which was identified by Balbir Singh and Tejbir Singh. He sent the dead body to the Forensic Science Department, Government Medical College, Amritsar for post mortem examination, along with his application Ex.PW-4/A, through Baldev Singh HC and Avtar Singh Ct. Thereafter, he proceeded to the spot. Gurmit Singh, Photographer was called to the spot, who took the photographs at that place. The ASI Collected the blood stained earth from the spot and put the same in a tin box, which was converted into a parcel and was sealed by him with his seal `KS'. The sealed parcel was taken into possession vide memo Ex.PB. The tractor-trolly, with which the iron wire was tied was taken into possession after removing the other end of the same from the log of wood, vide Memo Ex.PC.

The other tractor was taken into possession vide memo Ex.PD . The autopsy on the dead body of the deceased was performed by Dr.Ashok Chanana, who found a number of ante mortem injuries on the same. He deferred his opinion regarding the cause of death till the receipt of the report of the Chemical Examiner, to whom the viscera was sent. The complainant was medically examined by the doctor, who found six injuries on his person, which were detailed in the ML Report. After the post mortem examination, the wearing apparels found on the dead body were produced before the ASI by Baldev Singh, HC. Those wearing apparels were converted into parcel, which was sealed by the ASI with his seal `KS' and that sealed parcel was taken into possession vide memo Ex.PW-1/A. The viscera in the sealed box and the sealed envelope which were handed over by Dr. Ashok Chanana to Avtar Singh Ct. were also produced before the ASI and the same were taken into possession vide memo Ex.PW-1/B. On coming back to the police station, the ASI deposited the case property with the MHC. On 10.10.1996, Gurmit Singh son of Jarnail Singh produced the registration certificate of the tractor No. PBC-4270 before the ASI. That was taken into possession vide memo Ex.PW-1/C. The photographs, which were taken at the spot were produced by Gurmit Singh, Photographer before the ASI on 28.10.1996 and were taken into possession vide memo. Ex.PW-5/A. After analysis of the viscera of the dead body of the deceased, it was opined by the Chemical Examiner, vide his report Ex.PW-9/A, that no poison was detected therein. After the receipt

of the report of that Chemical Examiner, it was reported by Dr.Ashok Chanana, vide his report Ex.PW-7/2, that the cause of death was due to "shock as a result of injury No.1, which was sufficient to cause death in the ordinary course of nature.". In the course of investigation, all the accused were arrested and after completion thereof, the challan was put in before the SDJM,Ajnala, for their trial for the aforesaid offences.

3.On appearance of the accused, in the trial Court, the proceedings of Sec.207 Cr.P.C. were complied with by supplying them with the copies of the documents sent alongwith the police report and relied upon by the prosecution. From the perusal of those documents, the SDJM, Ajnala, found sufficient grounds for presuming that they committed offence, punishable under Sec. 304-A IPC. They were charged accordingly, to which they pleaded not guilty and claimed trial."

Learned counsel for the petitioner has submitted that the identity of the petitioner was not duly established in this case and, hence, the petitioner was entitled for acquittal. Learned counsel for the petitioner has further deposed that, during the pendency of the petition, parties have arrived at a compromise and the petitioner has already undergone the sentence qua imprisonment.

Learned State counsel, on the other hand, has submitted that the prosecution had been successful in proving its case against the petitioner.

In the present case, the prosecution story is that the tractor trolly had been loaded with bricks. One log of wood was being pulled

with the help of tractor by putting an iron wire around the log of wood. The truck was being driven by Mohan Singh. Accused- Amrik Singh, Baildar and Amrik Singh Forest Guard gave a signal to the truck driver to pull the log of wood, as a result of which, iron wire pulled and it rose above the level of the road and struck against the scooter. The complainant, who was sitting on the pillion seat, also suffered injuries.

In order to establish that the petitioner had also committed the alleged offence, prosecution was required to lead cogent and convincing evidence in this regard.

A perusal of the statement of PW2 Manjit Singh shows that it was not clear as to which of Amrik Singh accused out of the two had given a signal to the tractor driver to move the tractor. So far as PW3 Balbir Singh is concerned, he deposed that accused Mohan Singh driver and Amrik Singh Baildar and Gurmukh Singh had signalled tractor to move at a fast speed. He further deposed that Amrik Singh resident of Harsha Chinna was also present there. Petitioner is Amrik Singh, resident of Harsha Chinna. In these circumstances, from the statement of PW3 and PW2, it cannot be said that it was conclusively established that it was the petitioner who had given the signal to the driver of the truck. PW2 has failed to specify as to whether Amrik Singh -petitioner or other accused had given the signal. From the statement of PW3 also, it is not clear as to whether petitioner has given the signal because at one instance, he has deposed that Amrik Singh Baildar has given the signal,whereas, he further deposed that Amrik Singh resident of Harsha Chhina was also standing there. This renders the prosecution story doubtful with regard to the involvement of the petitioner in the alleged offence. Whenever, there is doubt in the prosecution story,

the benefit of the same has to go to accused. In these circumstances, the Courts below had erred in convicting the petitioner for an offence under Section 304-A IPC.

Accordingly, this petition is allowed. Conviction and sentence of the accused-Amrik Singh, petitioner under Section 304-A IPC is set aside and he is acquitted of the charge framed against him by giving him benefit of doubt.

(Sabina)
Judge

February 18, 2010
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